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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Application of BellSouth Corporation,	)	CC Docket No. 97-231
BellSouth Telecommunications, Inc.	)	
and BellSouth Long Distance, Inc.	)	
for Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Jerome L. Epstein
Marc A. Goldman
Paul W. Cobb, Jr.
Thomas D. Amrine
Jeffrey I. Ryen
JENNER & BLOCK
601 13th St., N.W., 12th Floor
Washington, D.C. 20005
202-639-6000

Mary L. Brown
Keith L. Seat
Susan Jin Davis
MCI TELECOMMUNICATIONS
CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202-872-1600

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EXECUTIVE SUMMARY

Three weeks ago, both the United States Department of Justice and the Florida Public Service Commission found that BellSouth has not come close to meeting the market-opening requirements of section 271. The Department, after reviewing the voluminous record in the South Carolina section 271 proceeding, and the Florida PSC, after undertaking a lengthy hearing including extensive BellSouth testimony, found BellSouth's region-wide systems to be sorely lacking in multiple respects. BellSouth was found to have violated the requirements of the checklist in many ways, including its defective Operations Support Systems ("OSS") and its unwillingness to provide unbundled elements to competitors as required by the Act.

Before the ink was dry on the two decisions finding BellSouth's region-wide systems grossly inadequate, BellSouth forged ahead with its section 271 application for Louisiana, relying on the identical systems the Department and the Florida PSC found to be defective. BellSouth does not even attempt to come to grips with the merits of either decision. Instead, it argues that the conclusions of the Department of Justice (which Congress directed be given substantial weight) are entitled to no weight because of its supposed lack of expertise in telecommunications matters. BellSouth also ignores the comprehensive findings of the Florida PSC, at the same time it demands that the Commission give controlling weight to the Louisiana commission's bare-bones "findings" that BellSouth included paper promises in its statement of generally available terms. Unlike the Louisiana PSC, the Florida PSC carefully analyzed BellSouth's readiness to provide critical checklist items such as OSS.

If there were even a modicum of truth to BellSouth's claim that "no one who fully reviews this application . . . could genuinely question BellSouth's good-faith commitment to satisfying the local-

market requirements of the checklist and the 1996 Act," BST Br. 24, BellSouth presumably would have corrected the multiple problems identified by the Department of Justice and the Florida PSC before returning to this Commission. That it instead dumped another frivolous section 271 application on the Commission based on the same inadequate OSS and paper promises reviewed by the Department and the Florida PSC, two days after receiving the decisions of both agencies, suggests that one might well question the sincerity of BellSouth's efforts to open its markets.

Moreover, if BellSouth were truly interested in opening its market, it would not insist on ripping apart pre-existing combinations of elements and making it prohibitively expensive and cumbersome for CLECs to put them back together. Having vandalized its own network, BellSouth will not comply with the Eighth Circuit's decision requiring that it provide CLECs physical access to its network to repair the damage. Instead, BellSouth insists that CLECs undergo the time-consuming and prohibitively expensive process of collocating in offices throughout its network in order to obtain such access -- a direct violation of the requirement that CLECs have the option to obtain access to BellSouth's unbundled elements without the expense and burden of providing CLEC elements such as collocation. As if collocation were not onerous enough to prevent CLECs from obtaining unbundled elements on reasonable and nondiscriminatory terms, BellSouth grossly inflates the cost of collocation and loops by insisting that the Eighth Circuit's order forces it to deny CLECs the use of efficient digital technology, and instead requires CLECs to pay exorbitant rates for outdated analog technology. The more expensive, inferior technology is needed for CLECs -- but not for BellSouth's own customers -- BellSouth argues, because it is the only way to put back together the elements it chooses to tear apart. This is not the nondiscriminatory access that BellSouth must provide to satisfy section 271.

BellSouth's refusal to provide combinations of network elements as they exist in its network is having a devastating effect on MCI's plans to compete on a facilities basis. Providing service through combinations of elements is the most effective means of facilities-based competition for residential customers, but the efficiency of competing using combinations is destroyed when BellSouth breaks apart the network elements before they are provided to MCI.

In addition, despite its protestations of good faith, BellSouth openly refuses to comply with the Commission's construction of section 271 with respect to pricing, OSS, and performance measurements and standards, not to mention that it challenges section 271 as unconstitutional. An applicant proceeding in good faith would not argue that the benefit to consumers of opening local markets is a forbidden area of inquiry for the Commission. Nor would such an applicant refuse to provide adequate OSS or refuse to provision service for CLEC customers in the same time frame and same quality it does for its own customers.

MCI's Comments are organized as follows:

Part I explains that BellSouth has not satisfied the threshold requirements of "Track A" because it has not proven that there are competing facilities-based providers of residential and business service in Louisiana, and BellSouth cannot proceed under "Track B." Part I further shows that PCS providers are not "competing providers" within the meaning of Track A because PCS service is not a substitute for the BOCs' wireline service.

Part II explains that BellSouth has not satisfied numerous aspects of the competitive checklist. First, BellSouth has not provided OSS on reasonable, nondiscriminatory terms. Some of the many defects in BellSouth's OSS include its failure to offer automated interfaces for reject notifications, service jeopardies, loss notification, and most complex services and unbundled elements. BellSouth also fails to offer an application-to-application interface for pre-ordering or for maintenance and repair,

and instead offers sub-par proprietary interfaces that provide far less functionality to CLECs than is available to BellSouth. In addition, BellSouth's systems simply are not operationally ready, as evidenced by data concerning BellSouth's processing of MCI's orders.

Second, BellSouth refuses to provide access to its unbundled elements in compliance with the Act. BellSouth has not specified in a legally enforceable way nondiscriminatory terms on which it will provide CLECs access to its network to allow them to reassemble combinations of elements BellSouth chooses to dismantle. BellSouth's insistence that CLECs can obtain such access only through the arduous and expensive process of collocating violates the express requirements of the Act and discriminates against BellSouth's competitors. BellSouth's decision to deny CLECs access to previously combined elements in BellSouth's network, and to grossly inflate the costs to CLECs of reassembling these elements, will significantly hinder the possibility of meaningful local competition in Louisiana.

Third, BellSouth refuses to commit to performance standards, let alone standards backed by self-executing remedies, needed to hold BellSouth to its duty to provide interconnection, resale, and unbundled elements on reasonable, nondiscriminatory terms. The performance reporting BellSouth offers to provide in the future omits most of the key functions BellSouth provides to CLECs.

Fourth, BellSouth offers, and the LPSC imposed, permanent rates that are not cost-based or forward-looking, further dimming the prospects for local competition in Louisiana. The LPSC adopted the recommendations of a staff consultant, over the findings of the ALJ who heard the cost evidence, even though the staff consultant admitted that due to time constraints she adopted a number of BellSouth cost models without even considering the CLECs' models. The rates set by the LPSC violate the Act in numerous respects, including that they are not geographically deaveraged, they include grossly inflated recurring and non-recurring charges that are not based on the forward-looking

efficient technology BellSouth uses in its own network, and they fail to allow CLECs to offer contract service arrangements at wholesale rates.

Fifth, BellSouth has not complied with the checklist in multiple other respects, including its failure to provide interconnection, loops, unbundled switching, and directory listings on reasonable, nondiscriminatory terms.

Part III discusses BellSouth's failure to demonstrate that it will comply with the requirements of section 272, including its failure to demonstrate present or future compliance as to transactions between BellSouth and its long distance affiliate, and its failure to adopt performance standards governing exchange access.

Part IV explains that BellSouth has not come close to demonstrating that interLATA entry in Louisiana would be in the public interest at this time. BellSouth's public interest argument rests on the fundamentally flawed premise that its entry into the already competitive long distance market would somehow force development of local competition, even though its bottleneck power remains firmly intact, and even though it has not taken the necessary steps to irreversibly open its local market to competition. Congress made clear, as did the Commission in the Michigan Order, that local competition may never develop if BOCs are allowed to offer in-region interLATA service while they retain control of the local bottleneck.

In short, BellSouth's application is fatally flawed in multiple ways and should be denied.

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

I. BELLSOUTH HAS NOT MET THE THRESHOLD REQUIREMENTS OF TRACK A.

As a threshold matter, BellSouth must prove either that it satisfies "Track A" of section 271, or that it is eligible to proceed under "Track B" of that section. See 47 U.S.C. § 271(d)(3)(A). BellSouth proceeds, as it must, under Track A, since it does not invoke any of the statutory exceptions to the requirements of Track A which would be necessary to proceed under Track B.

To meet Track A, BellSouth must prove that it is providing access and interconnection to one or more "competing providers" of telephone exchange service, and that those competing carriers provide service to "residential and business subscribers" at least predominantly over their own facilities. 47 U.S.C. § 271(c)(1)(A). The Commission has explained that in enacting Track A, Congress intended "to provide an incentive for BOCs to cooperate in the development of local competition." Application by SBC Communications, Inc., to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Mem. Opinion and Order ¶ 52 (rel. June 26, 1997) ("Okla. Order"); id. ¶ 46. The existence of such facilities-based competitors "is the integral requirement of the

checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition." H.R. Rep. No. 104-204, pt. 1, at 76-77 (1995) (emphasis added), quoted in Okla. Order ¶ 42.

Track B, in contrast, is available only if (1) "no such provider has requested the access and interconnection described in [Track A]" within the statutorily-prescribed time frame; (2) a state commission finds that all requesting carriers have negotiated in bad faith; or (3) a state commission finds that all requesting carriers have breached the implementation schedules in their approved agreements. 47 U.S.C. § 271(c)(1)(B). See Okla. Order ¶ 27. BellSouth has received multiple timely requests for facilities-based access and interconnection. Many of these requests have resulted in interconnection agreements that include provisions for facilities-based residential and business services.[1] BellSouth does not allege that any requesting carriers (let alone all) negotiated in bad faith or failed to comply with contractual implementation schedules.

Nor does BellSouth argue here, as it did in its South Carolina application, that every CLEC that has requested interconnection and access has failed to take "reasonable steps" toward implementing its agreement. That supposed exception to the Track A requirement has no basis in the Act in any event,[2] but even if it did, BellSouth has not attempted to prove its applicability in Louisiana. See BellSouth Brief in Support of Application for Provision of In-Region, InterLATA Services in Louisiana (Nov. 6, 1997) ("BST Br."), at 21-22 (BellSouth "might" qualify for Track B under a reasonable steps test "[d]epending upon" facts not presented in BellSouth's application). Because BellSouth bears the

[1] See, e.g., AT&T Agreement, Attachment 12 (performance standards for loop installation for residential and business customers); ACSI Agreement, Attachments D, E (number portability charges for residences and businesses); American MetroComm Agreement, Attachments B-3, B-4 (same); DeltaCom Agreement, Attachments D, E (same).

[2] See MCI's Comments in CC Docket No. 97-208, at 2-9; MCI's Reply Comments in CC Docket No. 97-208, at 4-9.

burden to prove compliance with all requirements of section 271, and has not attempted to prove it may proceed under Track B, BellSouth must comply with the requirements of Track A.

A. BellSouth Has Not Shown That Any Wireline Competitors Are Providing Facilities-Based Service to Residential Customers.

BellSouth points to a number of wireline carriers that in its view might meet Track A's description, but stops short of saying that any of these carriers is today providing facilities-based service to residential customers. First, BellSouth mentions ACSI but acknowledges that it has no information that ACSI is serving any residential customers. BST Br. 18. Next, BellSouth refers to American MetroComm and KMC Telecom but admits that neither is providing local service except via resale. BST Br. 18-19. BellSouth then mentions Shell Offshore Service Company, Cox Fibernet, Energy Hyperion, and ITC DeltaCom, but BellSouth offers no evidence that any of these companies is actually providing local service in Louisiana. See BST Br. 19-20.

BellSouth cannot meet Track A by simply throwing together a laundry list of carriers that might soon provide, but are not yet providing, competing facilities-based service to both residential and business subscribers. As this Commission has emphasized, a BOC's section 271 application must be complete when filed, and claims about what will happen in the future are entitled to no weight. See, e.g., Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Mem. Opinion and Order ¶¶ 50, 55 (rel. Aug. 19, 1997) ("Mich. Order").

B. BellSouth's Interconnection Agreements With PCS Providers Cannot Be Used to Satisfy Track A.

Track A requires BellSouth to show that it is providing access and interconnection to at least one "competing provider[] of telephone exchange service." BellSouth argues that it has met this requirement because it has provided access and interconnection to three PCS companies. BST Br. 8-17. However, PCS providers today are not "competing" providers; nor do they offer telephone

exchange service. As a result, BellSouth cannot meet the requirements of Track A by relying on PCS providers.

Accepting BellSouth's argument would render almost meaningless the requirements of Track A to screen out insubstantial and premature applications. PCS providers generally do not need much more from the BOC than interconnection -- many critical checklist requirements such as unbundled loops are inapplicable to PCS providers. Moreover, PCS is not even in the same market as the wireline local services that BellSouth provides on a monopoly basis, because PCS is not today a substitute for local wireline service. As a result, the existence of operational PCS providers is not a "tangible affirmation that the local exchange is indeed open to competition." BellSouth's monopoly can remain firmly in place while PCS providers are operational.

The Commission has indicated that a "competing" provider does not have to have any specific level of geographic penetration or specific market share, but that a competing provider "must be an actual commercial alternative to the BOC." Okla. Order ¶ 14. The Commission has also "recognize[d] that there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC." Mich. Order ¶ 77. Here, the Commission is not even faced with the question of how small is too small. PCS providers do not even compete in the same product market as do the BOCs.

Although the operational status of a small, facilities-based wireline carrier may provide some indication that the BOC has met the requirements of the checklist and that existing CLECs may be able to expand to provide a ubiquitous alternative to the BOC,[3] the operational status of PCS providers -- even if they are used by a few consumers as an alternative to the BOC -- shows little about BOC

[3] In order to give meaning to the Track A requirements, however, the BOC must show that the new entrant has a sufficient commercial presence to make it an actual commercial alternative to the BOC in more than a handful of isolated areas.

compliance and provides little chance of rapid expansion to provide a viable alternative to the BOC for voice and data telephony. PCS providers use entirely different technology than the BOC and price their services very differently.[4] As a result, the existence of PCS providers does not demonstrate the existence of a real commercial alternative to the BOC.

Indeed, this Commission recently concluded that wireless providers, including PCS providers, do not yet compete with wireline services. In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Second Annual Report and Analysis of Competitive Market Conditions, FCC 97-75, at 52-55 (Mar. 25, 1997). PCS is not yet "perceived as a wireline substitute." Id. at 55. Indeed, just three months ago the Commission again confirmed that mobile telephone service providers, including PCS providers, "are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange" because of higher prices and economic and technical limitations.[5] Among other technical limitations, PCS providers do not offer service that allows the use of more than one PCS handset with each PCS subscription and telephone

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[4] The lowest monthly fee for PCS service available from Sprint Spectrum, which BellSouth lists as one of the PCS providers that supposedly competes with its local service in Louisiana, is $25. This fee includes only 30 minutes of calling per month (with charges for incoming calls as well); peak minutes over the included airtime cost 31¢/minute; off-peak minutes over the included airtime cost 10¢/minute. The least expensive handset offered by Sprint Spectrum is $99. Although Sprint Spectrum may include other features, this is the lowest price it advertises to provide dial tone. See Sprint Spectrum Internet homepage (http://sprintspectrum-apc.com/pri_con.html) (downloaded Nov. 18, 1997). (Sprint Spectrum's New Orleans service states that it is now offering a "special promotion" of a $30 flat fee for 180 minutes of service, $50 for 400 minutes, and $80 for 800 minutes). To receive the PCS equivalent of unlimited local calling (approximately 500 minutes/month for a residential consumer), a customer would incur monthly charges of at least $50 per month, more than double the cost of BellSouth's unlimited residential calling plan in Louisiana. See FCC, Industry Analysis Division, Reference Book of Rates, Prices Indices, and Household Expenditures for Telephone Service 109 (Mar. 1997) ("Appendix 2: Residential Telephone Rates by City; October 1995"). Indeed, if PCS truly competed with local wireline service today, and PCS prices have been decreasing, local wireline prices should show a similar trend. BellSouth does not attempt to make such a showing.

[5] In re: NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, FCC 97-286 ¶ 90 (rel. Aug. 14, 1997) ("BA/NYNEX Order").

number. A customer who wished to use PCS as a substitute for wireline service thus would be unable to have more than one phone without subscribing and paying for two separate plans, each with substantial monthly payments, and each with a different number. For example, a customer could not even have one phone on the lower floor of a house and one or more phones on the upper floor without paying for a separate plan for each phone. And if one family member took the PCS phone in the car or otherwise outside the house, the household would not have any phone remaining on the premises unless it paid a double rate -- and even then the phone number of the two handsets would be different. Moreover, households wishing to use data services such as accessing the Internet could not come close to the transmission speeds available through wireline service, not to mention that they would have to purchase an additional PCS handset and pricing plan to avoid connecting their only handset to a modem each time a data service was accessed.[6] As a result, PCS providers are not at this time "competing providers" within the meaning of § 271.[7]

BellSouth disagrees, relying primarily on the Commission's definition of "competing providers" in section 251. However, the Commission's broad interpretation of the term "competing providers" in section 251 is expressly limited to use in "this section." 47 C.F.R. § 51.217(a)(1). In the

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[6] An April 30, 1997 study of the prospects for the wireless local loop by Hatfield Associates found that unresolved technological problems that limit the usefulness of PCS as a replacement for wireline service include those relating to 911 caller location data and limitations on the data rates that PCS can transmit (currently, an average of only 14.4 kilobytes per second). See Hatfield Associates, Inc., The Enduring Local Bottleneck II 70-72 (Apr. 30, 1997) (prepared on behalf of MCI) (attached as ex. J hereto).

[7] Indeed, this Commission has often described wireless service as something different than, but which might someday compete with, local exchange service. See, e.g., In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 Ghz and 38.6-60.0 Ghz Bands, ET Docket No. 95-183; PP Docket No. 93-253, ¶ 33 (rel. Nov. 3, 1997); In re Applications of PacificCorp Holdings, Inc. Transferor and Century Telephone Enterprises, Inc., 1997 FCC LEXIS 5741, ¶ 24 (Report No. LB 97-49) (rel. Oct. 17, 1997) (defining two separate product markets: local exchange services and interconnected mobile phone services). See also 47 U.S.C. § 332(C)(3)(A)(ii) (states cannot regulate wireless rates unless wireless service has become a replacement for landline exchange service) .

context of section 251, the Commission's definition enables all carriers that seek nondiscriminatory access from the BOC to receive such access; this is important because the BOC might perceive any carrier, even one that is competing in a different product market today, as a potential long term threat and attempt to discriminate against it. Moreover, nondiscriminatory access and interconnection may permit PCS to become a competitor to landline service, and BOCs that have PCS affiliates have an incentive to discriminate against unaffiliated PCS providers. In the context of section 271, in contrast, the term "competing provider" is intended to ensure that an operational competitor exists that provides a commercial alternative to the BOC today. PCS providers are not such a commercial alternative to BellSouth.

Moreover, PCS providers do not offer "telephone exchange service" within the meaning of section 271. Section 271 defines "telephone exchange service" by referencing section 153(47)(A), which defines it as: "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." PCS does not generally meet this definition. As the Cellular Telephone Industry Association recently argued to this Commission, wireless service does not generally operate within a telephone exchange or within an exchange area:

> [Wireless service providers] are not obligated to use the same physical boundaries of wireline rate centers or rate districts. Instead, WSPs utilize the concept of a geographical area referred to as a *Home Serving Area* (HSA). HSAs are typically much larger than the geography defined by a wireline rate center . . . .

CTIA Brief in CC Docket No. 95-116, Number Portability, p. 13 (ex. M hereto). Thus, today, wireless service, unlike local telephone service, does not operate within exchanges or exchange areas. PCS providers therefore do not provide telephone exchange service within the meaning of section

271(c)(1)(a).

This conclusion is underscored by Congress' decision to define telephone exchange services more narrowly in section 271 than in the statute generally. In section 271, Congress defined telephone exchange service only by reference to 47 U.S.C. § 153(47)(A), thus excluding telephone exchange service as defined in section 153(47)(B). Hence, Congress included traditional telephone exchange service provided within exchanges or exchange areas, but it excluded "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof)." 47 U.S.C. § 153(47)(B). By doing so, Congress clearly intended to preclude BOCs from meeting the threshold requirements of Track A by relying on carriers, like most PCS providers, that were at best "comparable" to traditional local service providers. Indeed, this Commission concluded that wireless carriers provide service "comparable" to local service providers within the meaning of section 153(47)(B).[8]

All of BellSouth's arguments to the contrary indicate, at most, that PCS will not always fall outside the definition of telephone exchange service within the meaning of section 271. Congress' express exclusion of cellular providers from the definition of telephone exchange service merely shows that Congress thought that it was so clear that cellular providers do not and will not provide competing telephone exchange service that the Commission need not take any time to adjudicate the issue in section 271 proceedings. Because the future role of PCS was more difficult to predict, Congress did

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[8] First Report and Order, Implementation of the Local Competition Provisions in the Telecomm. Act of 1996, 11 FCC Rcd 15499, 15999-16000, ¶ 1013 (1996) ("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 754 (8th Cir. 1997), modified, 1997 U.S. App. LEXIS 28652 (8th Cir. 1997). By interpreting section 153(47)(A) broadly enough to encompass PCS, however, BellSouth renders meaningless Congress' exclusion of section 153(47)(B). BellSouth fails to offer any explanation as to why Congress defined telephone exchange service only by referencing section 153(47)(A) if it intended to encompass all wireless carriers within the definition.

not expressly foreclose a BOC from relying on PCS providers to meet the requirements of section 271(c)(1)(A), but it certainly did not determine that PCS necessarily and currently constituted "telephone exchange service" within the meaning of that section. Congress merely left open the door for a BOC to show that the PCS provider met the definition of telephone exchange service and was a competing provider. Here, BellSouth fails to show that as of the date of its filing any PCS provider in Louisiana met the definition of telephone exchange service by providing service within exchanges or exchange areas. Indeed, Congress' express exclusion of cellular service shows that where PCS operates like cellular service, as it does in Louisiana, then PCS does not constitute competing telephone exchange service within the meaning of section 271.

II. BELLSOUTH HAS NOT PROVIDED OR FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST.

Because BellSouth has applied under Track A (and is not entitled to proceed under Track B), BellSouth must prove that it has "provid[ed]" and "fully implemented" the competitive checklist through its approved interconnection agreements. 47 U.S.C. §§ 271(c)(2)(A)(i)(I), 271(d)(3)(A)(i). In order to demonstrate that it has "provid[ed]" all checklist items, the BOC must first "have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." Mich. Order ¶ 110.[9] Second, the "BOC must demonstrate that it is presently ready to furnish

[9] BellSouth has not shown that one or more of its agreements with PrimeCo, Sprint Spectrum, and MereTel (the carriers BellSouth contends are facilities-based) impose a "concrete and specific" legal obligation to furnish each checklist item. Some checklist items, such as operator services, directory assistance, interim local number portability, dialing parity, and resale are not covered in any of the three agreements, and the provisions relating to the items that the agreements do cover are vague and lacking in operational detail. For instance, although each of the three agreements nominally offers physical collocation, the PrimeCo and Sprint Spectrum agreements state that all rates, terms, and conditions must be "negotiated," PrimeCo Agr., Attach C-13; Sprint Spectrum Agr., Attach. C-13, and the MereTel agreement says nothing at all about rates, term, or conditions for physical collocation. BelllSouth argues that each of the agreements actually imposes all of the legal obligations contained in

each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality." Id. For many checklist items, BellSouth cannot make either, let alone both, of these showings.

Indeed, in the context of BellSouth's application to provide interLATA service in South Carolina, MCI explained, and the Department of Justice found -- only three weeks ago -- that BellSouth has not even complied with its obligation to offer all checklist items pursuant to Track B. Yet BellSouth relies on the same region-wide systems the Department found to be so grossly lacking earlier this month, and the Department's finding is entitled to substantial weight. Because BellSouth has not even offered multiple requisite checklist items in compliance with the Act, it necessarily follows that its claim to have provided and fully implemented the checklist must be rejected.

The LPSC did not find to the contrary. In its order determining BellSouth's SGAT to be compliant with the competitive checklist, the LPSC did not purport to evaluate the practical availability of checklist items on reasonable and nondiscriminatory terms and conditions, let alone whether BellSouth had provided and fully implemented checklist items pursuant to approved interconnection agreements. Rather, it conducted a facial review of the SGAT, holding nothing more than that the SGAT included provisions for each checklist item that nominally recited what the Act requires. For example, the LPSC found BellSouth compliant with checklist item (iv) on the grounds that the "SGAT includes the requirement to provide 2-wire and 4-wire voice grade analog and 4-wire DS1 digital grade loops, as well as subloop elements . . . ." LPSC Order No. U-22252-A (Sept. 5, 1997) ("LPSC

BellSouth's other interconnection agreements. See, e.g., BST Br. 22, 36-37. In fact, however, the MFN clauses in the PCS agreements do not give those carriers an unrestricted right to opt into any and all terms of BellSouth's other agreements or SGAT. The MFN clause in each agreement carefully circumscribes the right to accept other terms, allowing the PCS providers to obtain other terms only with respect to "the arrangements covered by" their own agreements. See PrimeCo Agr. § XVI.B., C., D., E.; Sprint Spectrum Agr. § XVII.B., C., D., E.; MereTel Agr. § XVII.B., C., D., E.

Order"), at 9. The LPSC entirely ignored all evidence that BellSouth could not or would not actually furnish loops on terms and conditions that comply with the Act. See, e.g., Murphy Testimony at 10-13 (BST App. C-1, Vol. 3, Tab 37) (describing ACSI's difficulties obtaining unbundled loops from BellSouth in Georgia); see also ALJ Recommendation, at 32, Docket No. U-22252 (Aug. 14, 1997) (BST App. C-1, Vol. 13, Tab 131) (finding that BellSouth's OSS deficiencies prevent it from meeting checklist item (iv)). Likewise, the LPSC summarily found BellSouth compliant with checklist item (vii) simply because the "SGAT states that it offers nondiscriminatory access to 911/E911, directory assistance services and operator call completion services." LPSC Order, at 11. Clearly, the LPSC did not determine whether BellSouth "provid[es]," let alone has "fully implemented," all checklist items in Louisiana. Therefore, contrary to BellSouth's claim, see BST Br. 22-23 n.26, the LPSC's decision is entitled to very little weight, if any, because it did not even consider the issues of checklist compliance presented in this application.

A. BellSouth Fails to Provide OSS On Reasonable, Nondiscriminatory Terms.

OSS includes all of the systems, databases, personnel and documentation needed to ensure that the BOC can satisfy customer needs. Mich. Order ¶¶ 134-35, 137. The Commission has recognized the vital importance of non-discriminatory OSS to meaningful competition. "[O]perations support systems and the information they contain are critical to the ability of competing carriers to use network elements and resale services to compete with incumbent LECs." Id. ¶ 130. As a result, in order to meet the prerequisites of section 271, BellSouth must show that its OSS is non-discriminatory in terms of quality, accuracy, and timeliness for all three modes of competitive entry. Id. ¶¶ 133, 139, 159. The OSS must be non-discriminatory on its face and it must also be operationally ready. Id. ¶ 136.

BellSouth comes nowhere close to meeting its burden of showing that it fully implements, provides or even effectively offers non-discriminatory OSS. Even with respect to the OSS BellSouth claims to offer, the facial problems are legion. They include the absence of automated processes for key OSS functions such as reject notification and loss notification, the lack of system-to-system interfaces for pre-ordering and maintenance and repair, the use of an ordering process for migrations that leads to loss of dial tone for a significant number of customers, the absence of a process of change management, and a host of other problems.

In addition, even the limited OSS that BellSouth claims to offer is not operationally ready. The Commission has emphasized that commercial use is by far the best evidence of operational readiness. Mich. Order ¶¶ 138, 161. Because BellSouth's OSS is regional, experience with commercial use anywhere in the region can demonstrate the readiness -- or lack thereof -- of BellSouth's OSS. Id. ¶ 156. As long as CLECs somewhere in the region are attempting to use a particular component of BellSouth's OSS, only commercial success in the use of that component can demonstrate readiness.

The Commission found that Ameritech's OSS, especially its Electronic Data Interchange ("EDI") for ordering, was deficient despite over a year of testing with CLECs and several months of commercial use. Indeed, many of the problems with that interface did not become apparent until commercial use began. Here, BellSouth has far less experience with its OSS than did Ameritech -- despite the fact that CLECs throughout BellSouth's region have been trying to become operational. And that experience fails to show that BellSouth is operationally ready.

Indeed, the Florida PSC and the Department of Justice, both of which provided thorough examinations of BellSouth's OSS, recently concluded that BellSouth's OSS is discriminatory.[10] The

[10] The Alabama Commission and Georgia Commission have also both "expressed serious concerns about the adequacy of BellSouth's systems." Evaluation of the United States Department of Justice at 29, CC Docket No. 97-208 (filed Nov. 4, 1997) ("DOJ SC Eval.") (excerpts attached as ex. N

LPSC's decision to the contrary does not undermine this conclusion. Both the Louisiana ALJ, who heard the evidence, and the LPSC staff concluded that BellSouth's OSS was not yet ready. See ALJ Rec. 22-38; LPSC Staff 271 Recommendation, Docket U-22252 (Aug. 15, 1997) ("Staff Rec.") (BST App. C, Tab 133). The ALJ discussed some of the functional deficiencies in BellSouth's systems, including, for example, BellSouth's lack of a system-to-system preordering interface and failure to "provide[] the necessary technical information to enable competitors to develop systems to interact with LENS." ALJ Rec. 27. The ALJ also specifically found that BellSouth had presented "no evidence, other than the testimony of its witnesses, that its interfaces are performing as BellSouth claims they will" -- "no evidence of the results of any testing" and "no evidence of the 'practical results' of implementation of its interfaces in other states." Id. at 24-25. As a result, the ALJ concluded that BellSouth had failed to show that its OSS was non-discriminatory; the Staff agreed with the ALJ. ALJ Rec. 24; Staff Rec. 3. Nonetheless, in a single paragraph in which it failed to discuss either the functional deficiencies found by the ALJ or the lack of test evidence in the record, the LPSC rejected the recommendations of the ALJ and of the Staff and found BellSouth's OSS to be ready. This unsupported and unexplained conclusion should not be accorded any weight.

Not surprisingly, little has changed in the few days since the Florida PSC and the Department of Justice concluded, after a thorough review, that BellSouth's OSS is discriminatory. Among other deficiencies, BellSouth continues to process and transmit reject notifications, service jeopardies, and loss notifications in a manual fashion, still has not provided CLECs with a means to integrate BellSouth's preordering systems with their own systems, continues to process CLEC "change" orders using a process that risks disconnection of customers, has failed to adopt an acceptable process of change management, and continues to rely on an EDI interface that simply does not yet work.

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hereto).

BellSouth claims to have improved its EDI interface to allow some UNE orders to flow through and to have fixed one of the many functional deficiencies in LENS (the lack of CLEC access to the QuickService and Connect-Through indicators). But these are essentially the only improvements BellSouth has implemented since its South Carolina filing; indeed, some additional problems with BellSouth's OSS have become apparent. As a result, MCI has resubmitted the declaration of Samuel King on OSS from the South Carolina proceeding ("King Decl.") (ex. D hereto), along with a supplemental declaration ("King Supp. Decl.") (ex. C hereto) discussing the limited changes BellSouth has made, BellSouth's proposed future changes, and additional MCI experience with BellSouth's OSS.[11] Together these declarations show that BellSouth's region-wide OSS remains far from ready.

1. BellSouth's Use of Manual Processes for Vital OSS Functions is Discriminatory.

Even the OSS BellSouth purports to provide CLECs is discriminatory on its face. For several vital OSS functions, BellSouth lacks an automated method of transmitting information, or, in some cases, lacks any method at all. These functions include: reject notifications, service based jeopardy notifications, loss notifications, and notifications to the local carrier that its customer has changed interexchange carriers.

Manual OSS processes lead to delay, errors, and increased costs. This Commission found that Ameritech's manual processing of a significant number of orders led to extensive modification of due dates, delayed Firm Order Confirmations ("FOCs") and reject notifications, and, in general, a degradation in performance. Mich. Order ¶¶ 173, 181, 183, 186, 188, 193. In the case of Ameritech, this Commission was able to make such an assessment in part because of admissions by Ameritech and

[11] The new problems include substantial inaccuracies in the PSIMS database, manual processing of all supplemental orders, incorrect mapping of multi-line hunting, and others. King Supp. Decl. ¶¶ 15-16, 28-29.